

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7375-E, 7423-E, 7434-E, 7436-E
)	
Petition for Determination of Effective)	
Competition in various Michigan Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: May 28, 2008

Released: May 29, 2008

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Group B Communities.¹⁴ Petitioner sought to

⁶47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petition at 3.

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petition at 4.

¹²*See* Petition at 4-5.

¹³*See* Petition at 3.

¹⁴*Id.* at 5-6. In the Communities of Groveland (CSR 7375-E), Britton, Fairfield, Hudson, Woodstock (CSR 7423-E), Cassopolis, Penn, Pokagon, Silver Creek, and Wayne (CSR 7436), both the Comcast penetration figure and the aggregate DBS penetration figure clearly exceed 15 percent. Comcast argues that it is subject to effective

(continued....)

determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a zip code and zip code plus four basis where necessary.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁷ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

(...continued from previous page)

competition because in addition to DBS penetration exceeding 15 percent of the occupied households, the number of Comcast subscribers also exceed 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

¹⁵Petition at 6-7.

¹⁶Petition at 7-8.

¹⁷47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR(s) 7375-E, 7423-E, 7434-E, 7436-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities CUID(S)**CSR 7375-E**

Commerce	MI0896
Groveland	MI1788
Highland	MI0897
Independence	MI0924
Lake Angelus	MI1458
Lake Orion	MI0987
Lyon	MI0899
Milford Village	MI0892
Milford Township	MI0898
Orion	MI0988
Pontiac	MI0996
Springfield	MI1588
Walled Lake	MI0893
Waterford	MI0560
White Lake	MI0900
Wixom	MI0894
Wolverine Lake	MI0895

CSR 7423-E

Addison	MI0776
Adrian City	MI0041
Adrian Township	MI0777
Britton	MI1213
Dover	MI1500
Fairfield	MI1496
Hudson	MI1499
Madison	MI0778
Palmyra	MI1498
Raisin	MI0779
Ridgeway	MI1497
Rollin	MI0780
Tecumseh City	MI0043
Tecumseh Township	MI0781
Woodstock	MI0782

CSR 7434-E

Lathrup Village	MI0628
Oak Park	MI0650
Royal Oak Township	MI1160

CSR 7436-E

Calvin	MI0802
Cassopolis	MI0760
Dowagiac	MI0204
Jefferson	MI0803
La Grange	MI0804
	MI1940

<u>Communities</u>	<u>CUID(S)</u>
Penn	MI0805
Pipestone	MI1938
Pokagon	MI1289
Silver Creek	MI1288
Wayne	MI1287

ATTACHMENT B

CSR(s) 7375-E, 7423-E, 7434-E, 7436-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
<u>CSR 7375-E</u>				
Commerce	MI0896	22.07%	12,379	2,732
Groveland	MI1788	38.17%	2,106	804
Highland	MI0897	28.16%	6,786	1,911
Independence	MI0924	25.20%	11,765	2,964
Lake Angelus	MI1458	18.18%	132	24
Lake Orion	MI0987	25.40%	1,198	304
Lyon	MI0899	31.77%	3,887	1,235
Milford Township	MI0898	16.40%	5,470	897
Milford Village	MI0892	23.28%	2,427	565
Orion	MI0988	23.04%	12,246	2,821
Pontiac	MI0996	20.40%	24,234	4,944
Springfield	MI1588	32.10%	4,619	1,483
Walled Lake	MI0893	25.36%	3,158	801
Waterford	MI0560	20.21%	29,387	5,940
White Lake	MI0900	25.88%	10,092	2,612
Wixom	MI0894	19.66%	5,889	1,158
Wolverine Lake	MI0895	25.19%	1,671	421

CSR 7423-E

Addison	MI0776	48.98%	247	121
Adrian City	MI0041	25.89%	7,908	2,047
Adrian Township	MI0777	26.73%	2,147	574
Britton	MI1213	54.40%	261	142
Dover	MI1500	46.46%	650	302
Fairfield	MI1496	45.24%	621	281
Hudson	MI1499	39.86%	597	238
Madison	MI0778	35.73%	2,191	783
Palmyra	MI1498	36.31%	793	288
Raisin	MI0779	31.30%	2,265	709

Communities	CUID(S)	CPR*	2000 Census Household	Estimate DBS Subscribers
Ridgeway	MI1497	28.12%	576	162
Rollin	MI0780	40.35%	1,296	523
Tecumseh City	MI0043	31.15%	3,499	1,090
Tecumseh Township	MI0871	31.10%	672	209
Woodstock	MI0782	35.49%	1,344	477
<u>CSR 7434-E</u>				
Lathrup Village	MI0628	17.27%	1,621	280
Oak Park	MI0650	18.98%	11,104	2,108
<u>CSR 7436-E</u>				
Calvin	MI0802	48.59%	784	381
Cassopolis	MI0760	51.77%	703	364
Dowagiac	MI0204	37.42%	2,421	906
Jefferson	MI0803	42.77%	872	373
La Grange	MI0804 MI1940	25.46%	1,351	344
Penn	MI0805	38.01%	747	284
Pipestone	MI1938	48.45%	842	408
Pokagon	MI1289	35.57%	818	291
Silver Creek	MI1288	38.57%	1,299	501
Wayne	MI1287	38.03%	1,007	383

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR(s) 7423-E, 7434-E, 7436-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
<u>CSR 7423-E</u>				
Dover	MI1500	650	63	9.69%
Fairfield	MI1496	621	122	19.65%
Hudson	MI1499	597	105	17.59%
Palmyra	MI1498	793	83	10.47%
Ridgeway	MI1497	576	30	5.21%
Woodstock	MI0782	1,344	281	20.91%
<u>CSR 7434-E</u>				
Royal Oak Township	MI1160	2,511	468	18.64%
<u>CSR 7436-E</u>				
Calvin	MI0802	784	43	5.48%
Jefferson	MI0803	872	50	5.73%
La Grange	MI0804 MI1940	1,351	184	13.62%
Penn	MI0805	747	205	27.44%
Pipestone	MI1938	842	5	0.59%
Pokagon	MI1289	818	170	20.78%
Silver Creek	MI1288	1,299	280	21.56%
Wayne	MI1287	1,007	226	22.44%